IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 275/2002

Vipin Kumar Sharma …….Defendant/Appellant

Versus

Lal Singh & Others ….Plaintiffs/Respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date: September 30, 2004

The present appeal has been field under Order 43 Rule (r) Code of Civil Procedure (C.P.C.) against the order-dated 03.10.2002 passed by learned District Judge, Tehri Garhwal thereby granting ex-parte injunction against the defendants in Original Suit No.42/2002, Lal Singh Vs. Vipin Kumar & Others.

That on the application moved by the Plaintiff Under Order-39 Rule 1&2, Code of Civil Procedure, the learned District Judge issued ex-parte injunction. The appellant/defendant raised the grounds while granting the injunction that the trial court was not competent to grant ex-parte interim relief without showing cause to the defendants. While passing the order, learned trial court exceeded in its jurisdiction by overlooking mandatory provision of Section 80 (2) C.P.C. and also over looked the mandatory provision of Order 39, Rule 3 CPC and did not record any cogent reason to issue ex-parte injunction and no opinion was recorded about the prima facie case, balance of convenience and irreparable injury in favour of the plaintiff.

Prima facie the application 5 (c) was moved by the plaintiff supported by affidavit 6 (C) to issue notice to the State. After hearing the plaintiffs counsel, the District Judge allowed the application to file suit without serving the notices U/s-80 (2) C.P.C. and issued notices to the

defendants fixing 11.11.2002 for filing written statement and 18.11.2002 for framing issues.

The application 12 (C) for temporary injunction was heard by the District Judge on 03.06.2002 and the District Judge after hearing the plaintiff passed the order that “premature withdrawal of MCA No.6/2002 makes a prima-facie case of apprehension in the mind of plaintiff that the Defendant No.1 himself or some other person in his connivance is interested in changing the nature of the disputed property. As such, an ex-parte order was necessary to meet the ends of justice” and issue interim injunction against the defendants not to raise any construction changing the nature of the property or do anything to cancel the allotment of property in favour of the plaintiffs.

The learned District Judge passed the aforesaid ex-parte order after recording the reasons and issued the notices to defendants for filing objections by 19.10.2002 on the application 12-C and 13-C for disposal against the order passed by District Judge on 30.06.2002.

This Court on 17.10.2002 passed the order, “meanwhile status quo of the possession shall be maintained”.

The appeal is finally disposed of with the direction that if the application under Order 39, Rule 1 & 2 C.P.C. has not been decided by the learned District Judge, Tehri Garhwal, the same may be decided within on month from the date of receipt of the certified copy of this order and after hearing the parties.

Interim order, dated 17.10.2002, status quo of possession shall remain operative till the disposal of the application.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang